MONTANA LEGISLATIVE HISTORY

Chapter 8 19 79

Bill H _____ S 560 Original bill & history X C

H. Committee on JUDICIARY			S. Committee on JUDICIARY		
Hearing Date(s) & Exec. Action	1/24	X C	Hearing Date(s)	1/10	X C
		C		1/12	X C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

CHAPTER NO. 8

SENATE BILL NO. 56

INTRODUCED BY LENSINK

BY REQUEST OF THE DEPARTMENT OF HIGHWAYS

IN THE SENATE

January 5, 1979	Introduced and referred to Committee on Judiciary.
	On motion Senator Lensink was added as author to the Pre-Filed Bill.
January 13, 1979	Committee recommend bill do pass as amended. Report adopted.
January 15, 1979	Printed and placed on members' desks.
January 16, 1979	Second Reading, do pass.
January 17, 1979	Considered correctly engrossed.
January 18, 1979	Third Reading passed. Transmitted to Second House.

IN THE HOUSE

January 19, 1979	Introduced and referred to Committee on Judiciary.
January 25, 1979	Committee recommend bill be concurred in. Report adopted.
January 26, 1979	Second Reading, concurred in.
January 27, 1979	Third Reading, concurred in.

IN THE SENATE

January 29, 1979

Returned from Second House.
Sent to enrolling.

Report correctly enrolled.

SENATE BILL NO. 56

INTRODUCED BY _____

BY REQUEST OF THE DEPARTMENT OF HIGHWAYS

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAW RELATING TO CONDEMNATION; AMENDING SECTIONS 70-30-207 AND 70-30-305, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 70-30-207, MCA, is amended to read:

"70-30-207. Appointment of commissioners — qualifications — affidavit. (1) Immediately upon making and entering the preliminary condemnation order, the judge must meet with the respective parties or their attorneys of record for the purpose of appointing condemnation commissioners to ascertain and determine the amount to be paid by the plaintiff to each owner or other persons interested in such property by reason of the appropriation of such property. The appointment of condemnation commissioners and the commission hearing may be waived by consent of both parties in which case the proceeding shall be conducted in the district court as if the case had been appealed from an award by such commissioners.

(2) The court must thereupon appoint three qualified, disinterested condemnation commissioners, unless appointment has been waived. One of such commissioners shall be nominated by the party or parties plaintiff. One of such commissioners shall be nominated by the party or parties defendant. The third commissioner shall be the chairman and shall be nominated by the two commissioners previously nominated. However, if said two commissioners fail to make such choice at the time of their appointment, then such nomination shall be made by the presiding judge.

(3) Each commissioner shall possess the following qualifications:

(a) a citizen of the United States and over 18 years of age;

(b) that he is not more than 70 years of age;

(c) that he is in possession of natural faculties, of ordinary intelligence, and not decrepit;

(d) that he is possessed of sufficient knowledge of the English language;

(e) that he was assessed on the last assessment roll of a county within the judicial district in which the action is pending;

(f) that he has not been convicted of malfeasance in office or any felony or other high crime;

(g) that he is not related within the sixth degree to any party;

(h) that he does not stand in the relation of guardian

and ward, master and servant, debtor and creditor, or principal and agent or partner or surety as to any party.

(4) At the time of such meeting and nominations, there shall be filed with the court by each nominating party or judge an affidavit of the person so nominated stating substantially as follows:

(a) that he has formed no unqualified opinion or belief as to the compensation to be awarded in the proceeding or as to the fairness or unfairness of the plaintiff's offer for the lands and improvements of the defendants;

(b) that he has no enmity against or bias in favor of any party and has not discussed, communicated, or overheard or read any discussion or communication from any party relating to values of the lands in question or the compensation offered, demanded, or to be awarded;

(c) that if selected as a condemnation commissioner, he is willing to serve and will well and truly try the issues of compensation and render a true decision according to the evidence and in compliance with the instructions of the court;

(d) that he will not discuss the case with anyone except the other commissioners until a decision has been filed with the court."

Section 2. Section 70-30-305, MCA, is amended to read:

"~~70-30-305.~~ Condemnor to make offer upon appeal -- award of expenses of litigation. (1) The condemnor shall, within 30 days after an appeal is perfected from the commissioner's award or report, or not less than 30 days prior to trial, submit to condemnee a written final offer of judgment for the property to be condemned, together with necessary expenses of condemnee then accrued. If at any time prior to 10 days before trial the condemnee serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance, together with proof of service thereof, and thereupon judgment shall be entered. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible at the trial except in a proceeding to determine costs. The fact that an offer is made but not accepted does not preclude a subsequent offer.

(2) In the event of litigation and when the private property owner prevails by receiving an award in excess of the final offer of the condemnor, the court shall award necessary expenses of litigation to the condemnee."

-End-

FORTY-SIXTH LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY - SENATE

	Senate & House BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
1.	SB 1	1/3/79	1/5/79	1/5/79			1/5/79			
2.	SB 4	1/4/79	1/8/79	1/8/79			1/8/79			
3.	SB 25	1/4/79	1/8/79	1/8/79			1/8/79			
4.	SB 37	1/4/79	1/12/79	Tabled 2/2/79						
5.	SB 54	1/4/79	1/8/79	2/7/79			2/7/79			
6.	SB 65	1/4/79	1/22/79	2/6/79			2/6/79			
7.	SB 33	1/5/79	1/6/79	1/12/79			1/12/79			
8.	Reconsidered SB 41	1/5/79	1/6/79	1/11/79 1/6/79			1/11/79 1/6/79			
9.	SB 51	1/5/79	1/10/79	1/12/79		1/12/79				
10.	SB 56	1/5/79	1/10/79	1/12/79			1/12/79			
11.	SB 63	1/5/79	1/10/79	1/11/79	1/11/79					
12.	SB 69	1/5/79		transferred 1/8/79						
13.	SB 27		Tabled	Tabled						
14.	SB 28	1/9/79	1/15/79	1/15/79			1/15/79			
15.	SB 41	Reconsidered 1/9/79	1/11/79	1/11/79			1/11/79			
16.	SB 88	1/11/79	1/16/79	1/16/79			1/16/79			

mail order insurance company and Ms. Driscoll explained that this particular company was considered to be ethical and that they did not have any agents at all but did all their soliciting from the home office by phone and that they had many satisfied customers in the state of Montana.

There were no further proponents and no opponents. The committee agreed to wait for disposition of this bill.

CONSIDERATION OF SENATE BILL 51:

Senator Brown explained the contents of this bill, which deals with a problem the highway department has concerning sale of land to the original owner of interests in real property held by the Department of Highways. Senator Brown introduced James Beck, who is the Chief R/W Attorney, Legal Division of the Department of Highways.

Mr. Beck explained the problem they have with the excess land that is no longer needed for highways. He explained that they now send a notice of a right to meet the highest bid to the original owner or his successors. He said the problem comes in when the land has been subdivided and there are many adjacent owners.

Senator Lensink questioned as to what type of land parcels they are talking about and Jim Beck explained that this could be land whereby the highway made a loop and there was excess land going straight through, or a highway goes across a corner of a section, or the land is so damaged that it is valueless, or where there may be a gravel pit in the middle of a farmer's field. He stated that they try to sell this land to put it back on the tax rolls.

There was further discussion on the bill. There were no further proponents and no opponents and the committee agreed to hold further action on this bill.

Senator Brown made a motion that the amendment proposed by Jim Beck (see attached copy) be adopted. The motion carried unanimously.

CONSIDERATION OF SENATE BILL 56:

Senator Brown gave an explanation of this bill, which is an act to revise the laws concerning condemnations by the Department of Highways. He introduced James Beck, who is the Chief R/W Attorney, legal Division of the Department of Highways.

Jim Beck gave an explanation of exactly what this bill would do. He explained how if either side were dissatisfied with the decision of the commissioners after a hearing, they have 30 days in which to appeal to district court. He explained that the report of the commissioners cannot go into district court. This bill would allow the Department of Highways to waive the commission hearing. He explained how expensive the commission hearing can be in that the commissioners each get $200.00 a day, and experts have to be brought in and they are paid $150.00 a day. He stated that no one ever seems to be satisfied with the commission verdict so a great amount of them are appealed.

Senator Turnage questioned the wording, "waived by both parties" and made a motion to amend the bill on page 1, line 20 by inserting the word "written" following the word "by". The motion carried unanimously.

There were no further proponents and no opponents. Senator Van Valkenburg requested twenty-four hours to look into the matter further. The hearing on this bill was closed.

DISPOSITION OF SENATE BILL 33:

Senator Turnage stated that it was voted to delete Section 24 in its entirety. In that way, the old law stays the same. He then moved that the bill do pass as amended. The motion carried with all voting "yes" but Senator Towe abstaining.

CONSIDERATION OF SENATE BILL 27:

Senator Lensink stated that the Code Commissioners recommended that this bill be tabled as they felt that this bill was too controversial. Senator Turnage so moved and the motion carried by all voting yes with the exception of Senator Brown who voted no.

There being no further business, the meeting adjourned.

Everett R. Lensink

SENATOR EVERETT R. LENSINK, Chairman
Juciciary Committee

Date 1/11/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)			
Healy, John E. (Jack) (D)			

Each Day Attach to Minutes.

SENATE

All witnesses please fill out & register to testify

SENATE JUDICIARY COMMITTEE

BILLS 51, 56 & 63 VISITORS' REGISTER DATE 1/10/79

NAME	REPRESENTING	BILL #	Please note bill no. (check one) SUPPORT	OPPC
James McLeod	Wyhaps	S1456	✓	
Josephine Driscoll	Dept. Rep., State Auditor	S56 63	✓	
Tom Thomas	" "	"	✓	
Mona Jabs				
Harold O'Hara	Asst. O'Hara Ind			
Wayne Martell	Fort Peck			
Dale Mella	Fort Peck Tribes			
CALER SHIELDS	FORT PECK TRIBES			

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

we pass consideration on this bill today and reconsider it next week. Senator Brown wondered if the Legislative Council consulted with the Supreme Court at all in regard to this bill and Joan Mayer from the Legislative Council stated that she did not believe it ever reached that point. Senator Turnage wondered if this was an appropriate place to have the researcher, Valencia Lane, take this matter up with the Supreme Court and Senator Lensink so requested the researcher to do.

Senator Lensink announced that SB 65 would be heard on Monday, January 22, and gave a handout to each of the senators to study before this meeting.

DISPOSITION OF SENATE BILL 56:

Mr. Jim Beck, chief R/W attorney for the Highway Department came in late for this meeting and Senator Van Valkenburg requested that we reconsider this bill again. The bill was discussed and Senator Turnage moved that on page 4, lines 4 and 5, the bill be amended following "report" by striking the words, ", or not less than 30 days prior to trial" and inserting "or not more than 60 days after waiver of appointment of condemnation commissioners.". The motion carried unanimously.

Senator Van Valkenburg moved that the bill do pass as amended. The motion carried unanimously.

There being no further business, the meeting adjourned at 10:38 a.m.

Everett R. Lensink

SENATOR EVERETT R. LENSINK, Chairman
of Judiciary Committee

STANDING COMMITTEE REPORT

January 12, 19 79

MR. President:

We, your committee on Judiciary

having had under consideration Senate Bill No. 56

Respectfully report as follows: That Senate Bill No. 56

introduced bill, be amended as follows:

1. Page 1, line 20.
   Following: "by"
   Insert: "written"

2. Page 1, line 21.
   Following: "parties"
   Insert: ","

3. Page 4, lines 4 and 5.
   Following: "report"
   Strike: ", or not less than 30 days prior to trial"
   Insert: "or not more than 60 days after waiver of appointment of condemnation commissioners"

And, as so amended,

DO PASS

EVERETT R. LENSINK, Chairman.

STATE PUB. CO.
Helena, Mont.

Date 4/12/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)			
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

Judiciary COMMITTEE

46th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 33	laws relating to remedies	1/19	VanValkenburg	Weds. 24th	concurr consent	1/24
SB 56	law relating to condemnation	1/19	VanValkenburg	Weds. 24th	concurr	1/24
SB 41	relating to the judiciary and courts	1/20	S. Brown	Weds 24th	concurr consent	1/24
SB 78	require service of process in actions - dept of admins.	1/22	VValkenburg	Thurs 25th	concurred-amend	1/25
HB 308	license to marry not be issued if failed to support lawful dependents	1/22	Kemmis	Thurs. 25th	pass	1/25
HB 311	eliminate 1 hour wait for trial before the court may enter default	1/23	Ramirez	Fri. 26th	pass	1/26

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
January 24, 1979

The regular meeting of the Judiciary Committee was called to order by Chairman Scully at 8:00 a.m. in room 436 of the Capitol Building on Wednesday, January 24, 1979. All members were present with exception of Representative Carl Seifert.

Scheduled for hearing were House Bills No's 242, 270, and Senate Bills 33, 56, and 41.

SENATE BILL NO. 56: Senator Steve Brown explained the bill briefly and said that he would ask that Jim Beck go into it further.

JIM BECK: Chief Highway Attorney. The bill was formulated at our request. A committee hearing was mandatory in all condemnation cases. He said after going through the body of the bill that there are no evidentiary rulings. There is always a trial de nova unless both sides stipulate. He explained what he meant by this further after a question from one of the members.

There were no other proponents, no opponents and no further discussion and the hearing closed on Senate Bill No. 56.

SENATE BILL NO. 41: Senator Steve Brown said this is to clarify and revise the laws relating to courts. It also applies to district judges and the supreme court judges. It said it tried to put them on per diem expense like everybody else. The reduction was unconstitutional. He went on and explained further.

JOAN MAYER: Staff Attorney for Legislative Counsel. She said the bill changed judge to judicial officer. She went through the bill section by section and explained it. It was mostly for clarification of terminology.

There were no proponents and no opponents and no discussion and the hearing closed on Senate Bill No. 41.

SENATE BILL NO. 33: Senator Van Valkenburg asked that the committee excuse him and Joan Mayer would explain the bill, since it is a recode bill, an act to revise the laws relating to remedies. She went through the bill and explained the changes. There were no substantive changes, only updating of language and deleting some cross-references.

There was no discussion and the hearing closed on Senate Bill 33.

HOUSE BILL NO. 250: Representative Keyser moved "do pass" and the motion carried with the vote unanimous.

HOUSE BILL NO. 270: Representative Kemmis moved "do pass", Representative moved to amend line 12 strike "may" and insert "shall". Representative Kemmis moved a substitute motion strike "may be" and insert "is". The substitute motion carried with the vote unanimous.

Representative Kemmis moved "do pass as amended" and the motion carried with the vote unanimous. Representative Kemmis moved to place the bill on the consent calendar. Representative Seifert voted "no". The bill will not go to the consent calendar.

SENATE BILL NO. 33: Representative Lory moved "be concurred in" and the motion carried with the vote unanimous. Representative Day moved to place the bill on the consent calendar and the motion carried with the vote unanimous.

SENATE BILL NO. 41: Representative Daily moved "be concurred in" and the motion carried with the vote unanimous. Representative Lory moved to place the bill on the consent calendar. The motion carried with the vote unanimous and the bill will go to the consent calendar.

SENATE BILL NO. 56: Representative Keyser moved "be concurred in" and the motion carried with the vote unanimous. Representative Keedy moved to place the bill on the consent calendar. Representative Keedy voted "no" and the bill will not go to the consent calendar.

The meeting adjourned at 10:55 a.m.

John P. Scully, Chairman

JPS:mec

SENATE BILL NO. 56

INTRODUCED BY LENSINK

BY REQUEST OF THE DEPARTMENT OF HIGHWAYS

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAW RELATING TO CONDEMNATION; AMENDING SECTIONS 70-30-207 AND 70-30-305, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 70-30-207, MCA, is amended to read:

"70-30-207. Appointment of commissioners -- qualifications -- affidavit. (1) Immediately upon making and entering the preliminary condemnation order, the judge must meet with the respective parties or their attorneys of record for the purpose of appointing condemnation commissioners to ascertain and determine the amount to be paid by the plaintiff to each owner or other persons interested in such property by reason of the appropriation of such property. The appointment of condemnation commissioners and the commission hearing may be waived by WRITTEN consent of both parties, in which case the proceeding shall be conducted in the district court as if the case had been appealed from an award by such commissioners.

(2) The court must thereupon appoint three qualified, disinterested condemnation commissioners, unless appointment has been waived. One of such commissioners shall be nominated by the party or parties plaintiff. One of such commissioners shall be nominated by the party or parties defendant. The third commissioner shall be the chairman and shall be nominated by the two commissioners previously nominated. However, if said two commissioners fail to make such choice at the time of their appointment, then such nomination shall be made by the presiding judge.

(3) Each commissioner shall possess the following qualifications:

(a) a citizen of the United States and over 18 years of age;

(b) that he is not more than 70 years of age;

(c) that he is in possession of natural faculties, of ordinary intelligence, and not decrepit;

(d) that he is possessed of sufficient knowledge of the English language;

(e) that he was assessed on the last assessment roll of a county within the judicial district in which the action is pending;

(f) that he has not been convicted of malfeasance in office or any felony or other high crime;

(g) that he is not related within the sixth degree to any party;

REFERENCE BILL

(h) that he does not stand in the relation of guardian and ward, master and servant, debtor and creditor, or principal and agent or partner or surety as to any party.

(4) At the time of such meeting and nominations, there shall be filed with the court by each nominating party or judge an affidavit of the person so nominated stating substantially as follows:

(a) that he has formed no unqualified opinion or belief as to the compensation to be awarded in the proceeding or as to the fairness or unfairness of the plaintiff's offer for the lands and improvements of the defendants;

(b) that he has no enmity against or bias in favor of any party and has not discussed, communicated, or overheard or read any discussion or communication from any party relating to values of the lands in question or the compensation offered, demanded, or to be awarded;

(c) that if selected as a condemnation commissioner, he is willing to serve and will well and truly try the issues of compensation and render a true decision according to the evidence and in compliance with the instructions of the court;

(d) that he will not discuss the case with anyone except the other commissioners until a decision has been filed with the court."

Section 2. Section 70-30-305, MCA, is amended to read:

"70-30-305. Condemnor to make offer upon appeal -- award of expenses of litigation. (1) The condemnor shall, within 30 days after an appeal is perfected from the commissioner's award or report, ~~or not less than 30 days prior to trial~~ OR NOT MORE THAN 60 DAYS AFTER WAIVER OF APPOINTMENT OF CONDEMNATION COMMISSIONERS, submit to condemnee a written final offer of judgment for the property to be condemned, together with necessary expenses of condemnee then accrued. If at any time prior to 10 days before trial the condemnee serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance, together with proof of service thereof, and thereupon judgment shall be entered. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible at the trial except in a proceeding to determine costs. The fact that an offer is made but not accepted does not preclude a subsequent offer.

(2) In the event of litigation and when the private property owner prevails by receiving an award in excess of the final offer of the condemnor, the court shall award necessary expenses of litigation to the condemnee."

-End-